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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2007

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE V.PERIYA KARUPPIAH

Criminal Appeal No.93 of 2007

1. Ramesh
2. Saravanan .. Appellants/Accused 1 & 2

-vs-

State rep. by
Inspector of Police
Udumalpet Police Station
Coimbatore District
Crime No.1074 of 2005 .. Respondent/Complainant

Memorandum of Grounds of Criminal Appeals under Section 374(2) of the Criminal Procedure Code against the judgment dated 05.01.2007 made in S.C.No.306 of 2006 on the file of the Additional District & Sessions Judge and FTC-I, Coimbatore.

For Appellants :: Mr.K.Kalyanasundaram

For Respondent :: Mr.P.Kumaresan
Addl. Public Prosecutor

JUDGMENT
(Judgment of the Court was delivered by D.MURUGESAN, J.)

The appeal is directed at the instance of both the appellants, who were tried as A-1 and A-2 respectively in S.C.No.306 of 2006 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.I) Coimbatore. By a judgment dated 5.1.2007, the learned Sessions Judge found both the accused guilty of the offence under Section 302 read with 34 IPC and sentenced them to undergo life imprisonment and also to pay a sum of Rs.1,000/- each, in default to undergo simple imprisonment for three months. The legality of the said judgment is put in issue in this appeal.

2. The prosecution case in brief is as follows:-

The deceased-Manikumar was working as a Coolie in Ashok Mills situate at Pukkulam village. As he had contacts with number of women and was also supplying women to the villagers, the accused had warned the deceased and advised him not to indulge in such activities. In

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spite of such warning, the deceased continued to indulge in such acts. Hence on 1.11.2005 at about 8.00 p.m., both the accused, with an intention to murder the deceased, took him from his house to a transformer post situate within the jurisdiction of Udumalpet Police Station and, after giving him brandy, at about 11.00 p.m., while A-2 pushed the deceased to the ground and caught hold of his legs, A-1 stabbed the deceased with a billhook on his right hand and neck and due to the said injuries, the deceased died.

3. P.W.1, the father of the deceased, was informed by P.W.5 on 2.11.2005 at about 6.00 a.m., that the body of the deceased was found near a transformer post in the village and therefore he went to the scene of occurrence and found his son lying dead with injuries on the right hand and neck. Immediately he went to P.W.7 and asked him to write the complaint, Ex.P-1 and thereafter went to Udumalpet Police Station and lodged the complaint before P.W.16, the Sub Inspector of Police at about 7.30 a.m., which was registered in Cr.No.1074 of 2005 for the offence under Section 302 IPC. The printed First Information Report is Ex.P-15. The express reports were forwarded to the Judicial Magistrate, Udumalpet and also to the higher police officials.

4. P.W.17, the Inspector of Police took up investigation on receipt of the First Information Report and proceeded to the scene of occurrence at about 9.00 a.m., and prepared an Observation Mahazar, Ex.P-5 and also drew a rough sketch, Ex.P-16 in the presence of P.Ws.8 & 9. He also caused photographs of the scene of occurrence. He also recovered two empty brandy bottles, one 7up cool drink bottle, two brandy bottle caps and two paper cups, M.Os.1 to 4 respectively under a mahazar in the presence of the same witnesses. He also caused the assistance of finger print expert. He conducted inquest on the body of the deceased between 11.00 a.m., and 1.30 p.m., in the presence of witnesses and prepared the inquest report, Ex.P-17. He thereafter sent the body of the deceased through the Head Constable, P.W.14 to the Udumalpet Government Hospital for conducting post-mortem.

5. P.W.12, the Civil Surgeon attached to the said hospital, commenced post-mortem at 4.30 p.m., on the body of the deceased and she noted the following injuries:-

> "Body of male lies on its back, symmetrical. Moderately nourished. Eyelids partially opened. Tongue inside. Jaws clenched.
>
> (1) A transversely cut injury over the upper part of the neck above the level of thyroid prominence. Sterno mastoid muscles on the both sides severed 10 x 2.8 cms in size. Trachea - Oesophagus severed at the level of I tracheal ring. Great vessels on the right side of the neck severed at the same level. 50 gms. of clotted blood seen on the severed ends of carotid artery. Para vertebral muscles on the anterior aspect. Vertebra was found cut. Body of the anterior aspect of 3rd vertebra injured. Few blood clots seen in the tracheal oesophagus.
>
> (2) An oblique cut injury over the right side of the neck about 3 cm below the injury (1) 5 x 2 x 3 cms about 50 gms. firmly clotted blood over the wound. On removal

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of clots right sterno mastoid muscles fibres found avulsed. Structure over the supra clavicular fossa exposed. Hair line fracture found on the medial end of the right clavicle.

(3) Two transverse branched wound seen below the Ist injury. On deep dissection no underlying tissue damaged.

(4) L shaped lacerated injury over the base of the little finger exposing the bone head of the 5th meta carpel bone fractured with anti oblique cut injury over the right forearm on the middle third along the ulnar margin 3 x 2 x 2 cm underlying muscle cut. No fracture of ulnar bone.

Hyoid bone - left horn broken."

She issued the post-mortem certificate, Ex.P-14 with her opinion that the deceased would appear to have died of shock and haemorrhage due to injury sustained to the great vessels in the neck 12 to 18 hours prior to post-mortem.

6. P.W.17, continuing with his investigation, examined P.Ws.1 to 6, 10 and other witnesses and recorded their statements. He examined the witness namely, Mani at about 6.00 p.m., and on the basis of his statement, he recovered the red coloured torch light, M.O.10 and the two cells, M.O.11 series in Form-95. He also recovered the bloodstained clothes of the deceased produced by P.W.14 namely, one blue coloured half slack shirt, M.O.7, one white and blue coloured lungi, M.O.8 and one brief, M.O.9 in Form-95. On getting clue, he went to Udumalpet Old bus stand at about 6.00 a.m., on 3.11.2005 and arrested both the accused. In pursuance of the admissible portion of the confession of A-1, he recovered the bloodstained billhook, M.O.5 under a mahazar. He brought the accused to the police station at about 9.30 a.m., on 3.11.2005 and recovered the bloodstained full slack shirt, M.O.12 and the bloodstained lungi, M.O.13 from A-1 under Form-95. He also recovered the bloodstained full slack shirt, M.O.14 and the bloodstained lungi, M.O.15 from A-2 under Form-95. After taking fingerprints of the accused, at about 11.30 a.m., he remanded them to judicial custody. He also examined P.Ws.10,15,7,13,14,16 and recorded their statements. He sent the seized material objects to the Court under Form-95. He examined the post-mortem doctor, P.W.12 and recorded her statement. After receiving the reports of the fingerprint expert, Exs.P-20 & P-21, chemical analyst's report, Ex.P-22 and the serologist's report, Ex.P-23 and after completing investigation, he laid the charge sheet against the accused for the offence under Section 302 read with 34 IPC on 30.11.2005 before the Court.

7. In order to substantiate its case, the prosecution examined 17 witnesses, marked 23 exhibits and produced 15 material objects.

8. When the accused were questioned under Section 313 of the Criminal Procedure Code as to the incriminating materials appearing against them, they denied them as false. No witness was examined and no document was marked on the side of the defence. However, on consideration of the materials, the learned Sessions Judge found the accused guilty, convicted and sentenced them for the offence as stated earlier.

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9. In support of the criminal appeal, Mr.K.Kalyanasundaram, learned counsel for the appellants has submitted that the prosecution case rests solely on the circumstantial evidence and there are three circumstances put forth by the prosecution namely, (1) motive, (2) last seen theory and (3) the recovery of material objects. The learned counsel would submit that in a case of circumstantial evidence, the burden of proof as to the motive heavily rests on the prosecution. In this case, the motive has not been established and except the evidence of P.Ws.1 & 2 who are closely related to the deceased namely, P.W.1 is the father of the deceased and P.W.2 is the brother's son of P.W.1, no other witness has spoken about the motive. As it is pleaded that the deceased was having contacts with various women and was supplying women to the villagers, the prosecution ought to have examined independent witnesses to prove the above act of the deceased. Further, even according to P.Ws.1 & 2, when the deceased was questioned as to the above, the deceased has denied any such act. In these circumstances, there is absolutely no evidence to prove the motive. In the absence of the same, the prosecution cannot sustain its case solely on the other circumstances.

10. So far as the second circumstance namely, last seen theory is concerned, the learned counsel would submit that it is spoken to by P.Ws.1 & 6 and again P.W.1 being the father has only stated that the deceased was taken from his house by the accused. It is highly unnatural for a father to allow his son to accompany the accused, especially when the accused had earlier warned not only the deceased but also his father by stating that he should stop his son from indulging in such illegal acts of bringing the women and supplying to various persons in the village. Leaving apart the evidence of P.W.1, the evidence of yet another witness-P.W.6 also cannot be taken for sustaining the conviction as even according to him, both the accused and the deceased were friends and in the normal course, there is nothing strange in all the friends seen together. The learned counsel submits that merely because the accused and the deceased, who according to P.W.6 are friends, were moving around together, such circumstance need not necessarily result in the commission of the offence. The learned counsel further submits that the contents of the complaint itself is doubtful inasmuch as it has been admittedly written by P.W.7. From the evidence of P.W.7 it is seen that he saw the complainant namely, P.W.1 even at 6.00 a.m., on 1.11.2005 at the scene of occurrence and thereafter only, P.W.1 appears to have gone to him and prepared the complaint, Ex.P-1. There is every possibility for tutoring P.W.1 to falsely implicate the accused in this case. He would also submit that the arrest and confession also raise serious doubt inasmuch the evidence of P.Ws.10 & 15 who hail from different villages were shown as witnesses for the arrest and confession and when the subsequent recovery was made in a different place outside the scene place, independent witness ought to have been examined. He would further submit that both P.Ws.10 & 15 have stated that the accused were arrested at the new bus stand which is contrary to the evidence of the Investigating Officer, P.W.17 as according to him the arrest was made only at the old bus stand. In the event a reasonable doubt is entertained as to the arrest, confession and the consequential recovery, the prosecution case must fail for want of cogent and continuous circumstances to implicate the accused. So far as

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the case of the prosecution that the accused and the deceased had consumed brandy before the occurrence had taken place is concerned, admittedly, the post-mortem certificate, Ex.P-14 issued by the doctor-P.W.12 does not indicate the detection of alcohol. For all the above reasons, the chain of circumstances have not been established and there are missing links to connect the accused to the crime and therefore they are entitled to an acquittal.

11. Mr.P.Kumaresan, learned Additional Public Prosecutor, on the other hand, would submit that the motive is well spoken to by P.Ws.1 & 2 and the last seen theory is well spoken to by P.Ws.1 & 6. Apart from the above, both the motive and the last seen theory are also mentioned in the inquest report, Ex.P-17. The arrest and the confessional statements leading to the recovery would act as a strong piece of evidence to connect the accused to the crime. He would also submit that item no.4 referred to in Ex.P-22 relates to a rusty metal billhook with wooden handle and rusty metal band measuring about 61.5 cm in length and the same contained blood. He would also submit that as the recovery of the billhook and the shirts worn by both the accused were made pursuant to the confessional statements, the burden is therefore heavily shifted to the accused in terms of Section 114(g) of the Indian Evidence Act and the defence has not discharged the said burden. He would further submit that in Ex.P-23, Chemical Examiner's report, the human blood group AB was found in the shirt and lungi worn by the deceased at the time of occurrence. The very same human blood group AB was also found in the shirts and lungis worn by both the accused and the presence of human blood group AB in the clothes of the accused is the strongest piece of evidence against the accused. He would also submit that inasmuch as the consumption of brandy was around 11.00 p.m., on 1.11.2005 and the post-mortem was conducted on 2.11.2005 at about 4.30 p.m., after more than 17 hours, the non-detection of alcohol in the body of the deceased would not falsify the case of the prosecution. For all these reasons, the learned Additional Public Prosecutor submitted that the judgment under appeal need not be interfered with.

12. We have carefully considered the above contentions raised on either side and also perused the judgment of the learned Sessions Judge and other records placed before us. Before we delve upon the merits of the case based on the evidence, it would be proper for us to refer to the law laid down by the Apex Court on the issue relating to circumstantial evidence. As early as in the year 1952, the Apex Court in the judgment in Hanumant Govind Nargundkar v. State of Madhya Pradesh (AIR 1952 SC 343) has observed thus:

> 'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable

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ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

13. In Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116, the Apex Court has held that "while dealing with circumstantial evidence, the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea". In Padala Veera Reddy v. State of Andhra Pradesh (1989 Supp (2) SCC 706), the Apex Court has laid down the following tests for consideration in a case of circumstantial evidence:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
>
> (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should no only be consistent with the guilt of the accused but should be inconsistent with his innocence."

14. The above judgments were quoted with approval by the Apex Court in the recent judgment in Manjunath Chennabasapa Mudalli v. State of Karnataka (2007) 3 SCC (Crl.) 101.

15. That apart, the Apex Court has also held that the prosecution must establish its case without any missing link as has been held in Sudama Pandey v. State of Bihar (2002 SCC (Crl.) 239.

16. As in a case of circumstantial evidence the Court must keep the above principles enunciated by the Apex Court in mind, we propose to consider the evidence adduced by the witnesses in this case accordingly.

17. Motive: Absence of motive may not be relevant in a case where the evidence is overwhelming, but it is plus-point for the accused in a case where the evidence against him is only circumstantial. This law is settled by the Apex Court in the judgment in Sakharam v. State of Madhya Pradesh (1993 L.W.(Crl.) 29). It is true that motive is not the only ingredient for the purpose of conviction in a case where there are eye-witnesses and other overwhelming evidence. In a case of circumstantial evidence, the motive also plays an important role to connect the accused to the crime and the prosecution should also establish the motive, as it is a plus-point for the accused in a case where the evidence against him is only circumstantial. The motive as put forth by the prosecution is that the deceased was having contacts with various women and was also supplying women to the villagers. This was not liked by both the accused. From the evidence of P.W.1, it is seen that the accused on an

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earlier occasion had warned the deceased and advised him not to indulge in such illegal acts, as by that act he earns bad name to the village. That apart, just before the occurrence, the accused came and warned P.W.1, who is the father of the deceased, to contain the deceased from indulging in such illegal acts. The evidence of P.W.1 goes to show that he pacified the accused and told them that he will advise his son and accordingly, he has also advised his son, the deceased. This evidence of P.W.1 is also corroborated by P.W.2.

18. Coupled with the above evidence, it is also to be seen that P.W.1 was informed by P.W.5 that the body of the deceased was found near a transformer and immediately P.W.1 went to the scene of occurrence at about 6.00 a.m., on 2.11.2005 and thereafter to P.W.7 and prepared the complaint, Ex.P-1. Even in Ex.P-1 he has stated about the complaint and the consequential warning given by the accused to the deceased over his illegal acts of having contacts with various women and also supplying women to the villagers. After the above complaint was written by P.W.7, the same was given to P.W.16, which was registered at 7.30 a.m., itself within a period of one and half hours and the First Information Report reached the Court at 9.30 a.m. Even in the inquest report, Ex.P-17, the motive aspect is stated in column no.9. Though the inquest is relevant for the purpose of finding out the cause of death, the contents of the inquest report can be taken as an additional piece of evidence for corroborating the other evidence as to the motive. The inquest report also reached the Court at 10.30 a.m., on the same day even before the arrest of the accused was made. Hence we have no hesitation to hold that the prosecution has established the motive beyond reasonable doubt.

19. The next circumstance to connect the accused is the last seen theory. The last seen theory is spoken to by P.Ws.1 & 6. The evidence of P.W.1 as to the last seen theory cannot be disbelieved for the simple reason that he has stated that as his son was indulging in illegal acts by having contacts with various women and bringing them to the village for supplying them was informed to him by the accused, as a dutiful father, he has responded and told the accused that he will question his son, the deceased. The above conduct of P.W.1 makes us to believe the other statement as to the last seen theory, whereby he has stated that at about 8.00 p.m., on 1.11.2005, both the accused came to the house and took the deceased outside. This evidence is corroborated by the evidence of P.W.6 as well. According to the learned counsel for appellants, though the last seen theory is spoken to by P.W.6 as well as one Mani, strangely, the said Mani was not examined. Having regard to the evidence of P.Ws.1 & 6 as to the last seen theory, we have no reason to reject both the evidence for our further reasoning namely, that Ex.P-17-inquest report was prepared even before the arrest of the accused between 11.00 a.m., and 1.30 p.m., on 2.11.2005. The last seen theory as to the accused taking the deceased from the house of P.W.1 was spoken to by P.Ws.1 & 6 in the inquest as well. It is not necessary for the prosecution to examine all the persons who were enquired during the course of investigation and it is sufficient if some of the persons have been examined as witnesses and those witnesses speak of the last seen theory beyond any reasonable doubt. Hence, in our considered view, the prosecution has established the second circumstance namely, the last seen theory.

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20. The other circumstance is as to the arrest, confession and recovery. So far as the arrest and confession are concerned, the evidence of P.Ws.10 & 15, who are not only the witnesses for the arrest but also the witnesses for the confession and recovery is clear. The arrest is disputed by the learned counsel for appellants on the ground that both P.Ws.10 & 15 have stated that the accused were arrested at the bus stand and considering the distance as spoken to by them from the place of arrest and the scene village, it was hardly half a kilometre. Therefore, in all probability, the arrest could have been made only in front of the new bus stand. On the other hand, P.W.17, the Investigating Officer has stated that the arrest was made only at the old bus stand, which is in a far off place. In our considered view, we have no reason to accept the said submission. There is no discrepancy in the statements of P.Ws.10 & 15 as well as P.W.17. Both P.Ws.10 & 15 have not spoken anything about the arrest of the accused at the new bus stand. All that they have spoken was that the accused were arrested at the bus stand, which may be new or old, but the arrest was made only at the new bus stand as could be seen from the evidence of the Investigating Officer, P.W.17. He would also say that the old bus stand and the scene village is just two furlongs away. We cannot disbelieve the case of the prosecution merely because of minor discrepancy in the distance between the place of occurrence as well as the place of arrest. We have the further reason for our above conclusion namely, after the arrest, the confessional statement, Ex.P-7 was recorded and the recovery of the billhook, M.O.5 was made from the nearby place. As we have found that the evidence of P.Ws.10 & 15 could be believed for the arrest, confession and recovery, merely because some of the local residents have not been examined to show the recovery, that will not be fatal to the prosecution case so far as the recovery is concerned. Further, it is to be noted that immediately after the recovery of M.O.5, both the accused were taken to the police station and their shirts and lungis, M.Os.12 to 15 were recovered. Further, Ex.P-22, the chemical analyst's report supports the case of the prosecution, which shows that blood was detected in the billhook recovered on the basis of the admissible portion of the confession of the accused. Further, there is one more strongest piece of evidence against the accused namely, the shirt and lungi, M.Os.7 & 8 worn by the deceased contained human blood group AB as could be seen from Ex.P-23, the chemical analyst's report. Similarly, the shirt and lungi, M.Os.12 & 13 worn by A-1 at the time of occurrence also contained human blood group AB. Equally the shirt and lungi, M.Os.14 & 15 worn by A-2 at the time of occurrence also contained human blood group AB, which indicates the involvement of both the accused in the crime.

21. From the above discussions, it is seen that the prosecution has established the motive, last seen theory, recovery of weapon and also the shirts and lungis belonging to the accused contained the human blood group AB, which is proved to be tallying with the blood group AB of the deceased. In these circumstances, we find that the prosecution has satisfactorily established its case without there being any missing link and if at all some discrepancy as to the place of arrest is put before this court, such minor discrepancy will not affect the prosecution case

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in view of the overwhelming evidence. In our opinion, the circumstances leading to the involvement of the accused in the commission of the offence has been established and all the criteria laid down by the Apex Court in the earlier judgments are fulfilled. Accordingly, the appeal fails and it is dismissed.

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Sub Asst.Registrar

To

1. The Additional District & Sessions Judge
   (Fast Track Court No.I), Coimbatore
2. -do- thru' the Principal Sessions Judge, Coimbatore
3. The Superintendent, Central Prison, Coimbatore
4. The Inspector of Police,
   Udumalpet Police Station, Coimbatore District
5. The Public Prosecutor, High Court, Madras
6. The District Collector, Coimbatore
7. The Director General of Police, Chennai

+1 cc to Mr.K.Kalyanasundaram, Advocate Sr.No.75783.

CU(CO)
DCP/10.1

Crl.A.No.93 of 2007

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